

CALIFORNIA STATE PERSONNEL BOARD MEETING
Los Angeles Airport Hilton
5711 West Century Boulevard
Los Angeles, California 90045-5631
(310) 410-6121 FAX (310) 410-6177

Public Session Location - La Jolla B
Closed Session Location - La Jolla B

FULL BOARD MEETING MINUTES**

SEPTEMBER 9, 2003

PUBLIC SESSION OF THE STATE PERSONNEL BOARD

1. ROLL CALL

BOARD MEMBERS PRESENT:

William Elkins, President
Sean Harrigan, Member
Maeley Tom, Member

2. REPORT OF THE EXECUTIVE OFFICER - Walter Vaughn

The Board was advised of the following:

- A. State Personnel Board members and staff continue to pursue a meeting with the staff in the Governor's office to discuss issuance of an Executive Order on Equal Employment Opportunity and Diversity.
- B. State Personnel Board member Sean Harrigan and Walter Vaughn, Executive Officer met with representatives of the California State Employees Association to discuss

**The State Personnel Board Summary Minutes can be obtained at the following Internet address:
<http://www.spb.ca.gov/calendar.htm>

issues related to layoffs, seasonal employment, a clerical classification proposal and other issues. Staff will have follow-up meetings with the union to discuss specifics.

- C. The names of nearly 8,000 state employees have been placed on the Surplus list, nearly 3,000 are on the State Restrictions on Appointment list and 121 are on Departmental Reemployment lists.
- D. The Department of Finance has issued instructions to State Agency's to develop plans for a potential 20% budget reduction for the fiscal year 2004-05. More details will be provided to State Personnel Board members at future meetings.

3. REPORT OF THE CHIEF COUNSEL - Elise Rose

The Chief Counsel reported on the following:

Legal News:

- A. Hastings v. Department of Corrections - Petition for review was filed with the California Supreme Court on August 26, 2003.

Litigation:

- A. Association of California State Attorneys & Administrative Law Judges (ACSA) v. Department of Personnel Administration (DPA) - On August 27, 2003, the Court of Appeal issued its published decision on rehearing. It again held, as it did in its initial decision, that the Memorandum of Understanding (MOU) provisions for Bargaining Units 8, 11, 12 and 13 that provide for arbitration of employee discipline in lieu of State Personnel Board (SPB) adjudication of employee appeals are unconstitutional. The court responded to the issues raised by the unions and DPA on rehearing and held, *inter alia*, that: (1) the trial court did not err in failing to stay this action pending resolution on a Public Employment Relations Board complaint filed by International Union of Operating Engineers (IUOE) because, *inter alia*, the "instant case does not involve a charge of unfair practice or misconduct against the SPB nor does this case involve a labor management relations dispute between the State as employer and its employees; and, furthermore, the court

held, SPB does not occupy the position of "employer" under the Dills Act in matters related to its role in reviewing discipline; (2) the trial court did not err in excluding evidence proffered by IUOE to the trial court; (3) the appellate court has jurisdiction to consider the amended MOU, submitted to trial court in response to its ruling, to finally dispose of the constitutional issues raised by the parties and avoid unnecessary litigation in the trial court.

- B. State Personnel Board v. Department of Personnel Administration (Post and Bid) - The California Correctional Peace Officer's Association has been granted leave to participate as amicus in this case pending in the appellate courts.
- C. California Department of Corrections (CDC) v. State Personnel Board (Villanueva) - Superior court for the County of Fresno denied CDC's petition for writ of mandate in this case involving the dismissal of an employee who reported a dream about killing prison administration officials.

Other news:

- A. Appeals Division Statistics - The number of appeals received has increased slightly over the last fiscal year; the number of closures, settlements and active cases has remained fairly stable.
- B. The Council of Counsels met on September 4, 2003. That group has merged with the State Personnel Board's (SPB) Select Advisory Panel. The group was updated on general SPB news, significant court rulings, status of pilot projects, planned implementation of new pilot project on prehearing and settlement conferences, and on the Board's proposed regulations on outreach and recruitment. The next meeting will be scheduled for early December 2003.

4. REPORT ON LEGISLATION - Sherry Hicks

The Board was advised of the following:

- A. The Office of Legislation gave an update on the legislation that has been tracked through the Legislative session.

5. ORAL ARGUMENT

Oral argument in the matter of MICHAEL GATTI, CASE NO. 00-3636, appeal from six months suspension AND CASE NO. 99-5149, appeal from whistleblower retaliation complaint. Department of Parks and Recreation.

Persons Participating:

Barrett W. McInerney, Labor Relations Counsel, representing Department of Personnel Administration
Lauren John Udden, Attorney at Law, representing appellant
Adam Stern, Attorney at Law, representing appellant

ACTION: On September 9, 2003, the Board adopted the Administrative Law Judge's (ALJ) proposed decision modifying the 6 month suspension to a 60 working day suspension AND the Board adopted the ALJ's proposed decision granting the whistleblower retaliation complaint in part and denying it in part.

VOTE: Elkins, Harrigan, Tom - Aye.

6. PUBLIC HEARING TO ADOPT PROPOSED AMENDMENT TO SECTION 50 IN TITLE 2 OF THE CALIFORNIA CODE OF REGULATIONS

The amended Section 50, entitled Merit Selection Manual, incorporates by reference the State Personnel Board's Merit Selection Manual: Policy and Procedures, dated September 2003. The September 2003 edition of the Merit Selection Manual: Policy and Procedures incorporates nine new sections with the existing March 2003 edition of the manual.

Persons Participating:

Shelly Langan, Staff, California State Personnel Board
Alexandro Garza, Civil Service Division Representative,
California State Employees Association, (CSEA) SEIU #1000
Kathleen O'Connor, Senior Labor Relations Representative,
CSEA

ACTION: Adopted on September 9, 2003.

VOTE: Elkins, Harrigan, Tom - Aye.

7. PUBLIC HEARING TO ADOPT PROPOSED STATE PERSONNEL BOARD POLICY ON RECRUITMENT AND OUTREACH AND ADOPT PROPOSED AMENDMENT TO SECTION 50 IN TITLE 2 OF THE CALIFORNIA CODE OF REGULATIONS
The State Personnel Board's proposed policy on outreach and recruitment for civil service examination processes is

specified in the proposed Section 3300 of the Merit selection Manual: Policy and Procedures, entitled Recruitment for Civil Service Examinations. The amended Section 50, entitled Merit Selection Manual, incorporates by reference the State Personnel Board's Merit Selection Manual: Policy and Procedures, dated October 2003, which will integrate Section 3300 in the manual.

Persons Participating:

Shelley Langan, Staff, California State Personnel Board
Alan Clayton, Director, Equal Employment Opportunity, Chicano Employees Association - Los Angeles County
Alexandro Garza, Civil Service Division Representative, California State Employees Association, (CSEA) SEIU #1000

ACTION: Submitted

8. BRIEFING ON THE IMPACT OF PROPOSITION 54 ON STATE CIVIL SERVICE PROGRAMS

ACTION: Briefing held

BOARD ACTIONS

9. STATE PERSONNEL BOARD SUMMARY MINUTES OF JULY 22, AND AUGUST 5, 2003

ACTION: Adopted on September 9, 2003.
VOTE: Elkins, Harrigan, Tom - Aye.

10. ACTION ON SUBMITTED ITEMS

ACTION: See pages 20-21.

11. ADMINISTRATIVE LAW JUDGE CASES

On September 9, 2003, the Board adopted the following decisions presented by Elise Rose, Chief Counsel, California State Personnel Board.

VOTE: Elkins, Harrigan, Tom - Aye.

REJECTED DECISIONS

AVERY CUNNINGHAM, CASE NO. 02-3346
Appeal from five-percent reduction in salary for six months
Supervising Correctional Cook
Wasco - State Prison
Department of Corrections
ACTION: The Board adopted the ALJ's proposed decision
modifying 5% reduction in salary for 6 months to 5% reduction
in salary for 2 months

BENJAMIN JOHNSON, CASE NO. 02-2700
Appeal from five-percent reduction in salary for six months
Correctional Officer
Imperial - State Prison
Department of Corrections
ACTION: Submitted

REJECTED AND REMANDED DECISION

RHONDA HANSEN, CASE NO. 02-0530R
Appeal from rejection during probation
Staff Services Analyst
Department of Health Services, Sacramento
ACTION: Rejection during probation affirmed

MARIA LEON, CASE NO. 02-4163
Appeal from dismissal
Employment Program Representative
Employment Development Department
ACTION: Withdrawal sustained

CHIEF COUNSEL RESOLUTION

GEORGE REYNOLDS, CASE NO. 02-0008P
Appeal from 60 working days suspension
Teacher, (High School-General Education/Correctional Facility
Whittier - Youth Correctional Facility
Department of the Youth Authority
ACTION: The Board adopted the ALJ's decision finding that
appointing power has complied with backpay and other
obligations under stipulated settlement

PROPOSED DECISIONS

SAMUEL BRYANT, CASE NO. 00-4238

Appeal from dismissal

Youth Correctional Officer

California Youth Authority

ACTION: Administrative Law Judge's proposed decision
rejected by Board. Board to decide case itself

WILLIAM ENCISCO, CASE NO. 02-4146

Appeal from fifteen workdays suspension

Health Education Consultant II

Department of Health Services

ACTION: 15 working days suspension modified to 10 working
days suspension

BOBBY FERRELL, CASE NO. 03-0735

Appeal from formal reprimand

Caltrans Highway Maintenance Worker

Department of Transportation

ACTION: Formal reprimand sustained

FREIDERICH GARST, CASE NO. 03-0853E

Appeal from denial of request for

Reasonable Accommodation

Associate Tax Auditor

Board of Equalization

ACTION: Reasonable accommodation request denied

ROBERT GREER, CASE NO. 02-3624

Appeal from dismissal

Medical Technical Assistant

Calipatria State Prison

California Department of Corrections

ACTION: Submitted

GORDON HOLMES, CASE NO. 03-0426E

Appeal from discrimination

Associate Tax Auditor

Franchise Tax Board

ACTION: Discrimination appeal denied

MICHAEL B. HORNSBY, CASE NO. 01-4202E

Request to File Charges Appeal against Ernie Trujillo, Ed
Quam, and Toni Camasura from their positions as District
Manager, District Administrator, and Health Facilities

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Evaluation Supervisor, respectively
A Member of the Public
Department of Health Services, Sacramento
ACTION: Request to file charges dismissed

THEODORE HUGHING, CASE NO. 03-0354
Appeal from medical termination/demotion/transfer
Food Service Supervisor
Department of Developmental Services
ACTION: Administrative Law Judge's proposed decision
rejected by Board. Board to decide case itself

FERNANDO JIMENEZ, CASE NO. 03-1202
Appeal from constructive medical termination
Youth Correctional Officer
Fred C. Nelles Correctional Facility, Whittier
California Department of Youth Authority
ACTION: Constructive medical termination appeal granted

MARGO J. KIRKLAND, CASE NO. 02-1636
Appeal from rejection during probation
Transportation Engineering Technician Department of
Transportation
ACTION: Rejection during probation affirmed

DONALD KUNKEL, CASE NO. 02-4471E
Appeal from whistleblower retaliation
Caltrans Equipment Operator I
Department of Transportation
ACTION: The Board adopted the proposed decision dismissing
the whistleblower case, but issued a special resolution

MELVIN MAH, CASE NO. 03-2004
Appeal from dismissal
Correctional Officer
San Quentin - State Prison
Department of Corrections
ACTION: Dismissal sustained

MARY NOGUCHI, CASE NO. 03-0171E
Appeal from denial of request for
reasonable accommodation
Telecommunications Technician
Department of General Services
ACTION: Reasonable accommodation appeal denied

JOHN L. RAMOS, CASE NO. 03-1264
Appeal From dismissal
Equipment Material Worker
Department of Transportation
ACTION: Dismissal sustained

VINCE RENFROW, CASE NO. 02-4377
Appeal Dismissal
Correctional Officer
San Quentin State Prison
California Department of Corrections
ACTION: Dismissal sustained

SILVIA SALAZAR, CASE NO. 03-1433
Appeal from reduction in salary
Licensing and Registration Examiner
Department of Motor Vehicles
ACTION: The Board adopted the ALJ's proposed decision, but modified the 10% reduction in salary for 12 months to an official reprimand

RUBEN SANDOVAL, CASE NO. 03-1429
Appeal from Official Letter of Reprimand
Correctional Officer
Avenal State Prison
Department of Corrections
ACTION: Official letter of reprimand sustained

HAROLD K. SIKES, CASE NO'S.
03-0206 & 03-0686
Appeal from suspension for one day and dismissal Security Guard 22nd District Agricultural Association, Del Mar
ACTION: Suspension for one day modified to a formal reprimand; and dismissal sustained

PAM WATERS, CASE NO. 02-3313
Appeal from demotion
Correctional Officer
California Rehabilitation Center - Norco
Department of Corrections
ACTION: The Board adopted the ALJ's proposed decision revoking the demotion, but issued a special resolution

CHARLES YOUNGLOVE, CASE NO. 00-2080
Appeal from dismissal
Associate Insurance Examiner
Department of Insurance
ACTION: The Board adopted the proposed decision, but modified the dismissal to a three month suspension

PETITIONS FOR REHEARING

MICHAEL HUGHES, CASE NO. 02-1264P
Appeal from Whistleblower Retaliation
Business Services Assistant
Department of Fish and Game
ACTION: Petition for rehearing filed by appellant denied

TIMOTHY SHINE, CASE NO. 01-3796P
Appeal from eight work days suspension
Building Services Engineer
California State University , San Marcos
ACTION: Petition for rehearing filed by appellant granted;
resolution issued correcting backpay award

STIPULATIONS FOR SETTLEMENT

ARLENE RUTHERFORD, CASE NO. 03-0524
Appeal from dismissal
Chief Executive Assignment Appointment
Department of Financial Institutions
at San Diego
ACTION: Stipulation for settlement disapproved

12. RESOLUTION EXTENDING TIME UNDER GOVERNMENT CODE SECTION
18671.1 EXTENSION (See page 24)

ACTION: Adopted

13. WITHHOLD APPEALS
On September 9, 2003, the Board adopted the following
decisions presented by Laura Aguilera, Assistant Executive
Officer, California State Personnel Board
VOTE: Elkins, Harrigan, Tom - Aye.

ISAAC ACEVES, CASE NO. 02-3921
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED

NICHOLAS ALVAREZ, CASE NO. 03-0158
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED

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RICHARD ARCE, CASE NO. 02-3920
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED

KRISTEN D. ASHBY, CASE NO. 02-3926
Classification: Cadet, CHP
California Highway Patrol
ACTION: DENIED

TERESA AUTERY, CASE NO. 02-4352
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED

ANGELO AUTRY, CASE NO. 02-3925
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED

DEBORAH BAKER, CASE NO. 03-0162
Classification: Youth Correctional Officer
California Youth Authority
ACTION: DENIED

EDMOND BAKER, CASE NO. 02-4353
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED

ESTEBAN BECERRA, CASE NO. 03-0616
Classification: Correctional Officer
Department of Corrections
ACTION: GRANTED

JAMES BERA, CASE NO. 03-0590
Classification: Correctional Officer
Department of Corrections
FRANK BESS, CASE NO. 03-0502
Classification: Youth Correctional Officer
California Youth Authority
ACTION: DENIED

FRANK BESS, CASE NO. 03-0502
Classification: Youth Correctional Officer
California Youth Authority
ACTION: DENIED

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ROY BUCHANAN, CASE NO. 03-0592
Classification: Youth Correctional Counselor
California Youth Authority
ACTION: DENIED

LEAMON CALDWELL, CASE NO. 03-0163
Classification: Youth Correctional Officer
California Youth Authority
ACTION: DENIED

KELLY CARLISLE, CASE NO. 02-4354
Classification: Youth Correctional Officer
California Youth Authority
ACTION: DENIED

DAVID CUMMINGS, CASE NO. 02-4060
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED

MATT DANFORTH, CASE NO. 02-4061
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED

DOAN TRAN DOAN, CASE NO. 02-3929
Classification: Youth Correctional Officer
California Youth Authority
ACTION: DENIED

THEODORE DONALDSON, CASE NO. 02-3918
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED

ALEJANDRO FLORES, CASE NO. 02-4066
Classification: Youth Correctional Officer
California Youth Authority
ACTION: DENIED

JOHN FRANEY, CASE NO. 03-0508
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED

SHANNON HICKS, CASE NO. 02-4030
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED

DOMINGO HUIPE, CASE NO. 02-4212
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED

TENIKA JOHNS, CASE NO. 02-3978
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED

RANDALL JOHNSTON, CASE NO. 03-0125
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED

CHRISTOPHER KENDRICK, CASE NO. 03-0084
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED

PAMELA KNIGHT, CASE NO. 02-3610
Classification: Medical Technical
Assistant - (CF)
Department of Corrections
ACTION: DENIED

NATHANIEL KOLDA, CASE NO. 02-3697
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED

VICTORIA LINARES, CASE NO. 03-0077
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED

ANTONIO LOCKETT, CASE NO. 02-3828
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED

KATRINA LLOYD-HOLLY, CASE NO. 02-4159
Classification: Cadet, CHP
California Highway Patrol
ACTION: DENIED

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IGNACIO MENDOZA, CASE NO. 03-0422
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED

LESLIE MERSHON, CASE NO. 02-4344
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED

PATRICIA MORENO, CASE NO. 02-3870
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED

MICHELLE MURRAY, CASE NO. 02-4178
Classification: Youth Correctional Officer
California Youth Authority
ACTION: DENIED

CHRISTOPHER NALLS, CASE NO. 02-4370
Classification: Youth Correctional Counselor
California Youth Authority
ACTION: DENIED

ROBERT OXFORD, CASE NO. 02-3388
Classification: Correctional Officer
Department of Corrections
ACTION: DISMISSED

MICHAEL RAMIREZ, CASE NO. 02-4129
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED

DANIEL SANCHEZ, CASE NO. 02-3603
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED

DENNIS SCHUBER, CASE NO. 02-3861
Classification: Youth Correctional Officer
California Youth Authority
ACTION: DENIED

MATTHEW STARKLOFF, CASE NO. 02-4127
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED

ANGELA STATT, CASE NO. 02-4417
Classification: Correctional Officer
Department of Corrections
ACTION: DISMISSED

RACHEL WALL, CASE NO. 02-4130
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED

RODNEY WILLIAMS, CASE NO. 02-4122
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED

TIMOTHY WOKEE, CASE NO. 02-3873
Classification: Correctional Officer
Department of Corrections
ACTION: GRANTED

14. MEDICAL APPEALS

On September 9, 2003, the Board adopted the following
decisions presented by Laura Aguilera, Assistant Executive
Officer, California State Personnel Board
VOTE: Elkins, Harrigan, Tom - Aye.

MANUAL BALTAZAR, CASE NO. 02-4054
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED

VICTOR BALVANDEA, CASE NO. 02-3678
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED

SCOTT EVANS, CASE NO. 03-0642
Classification: Cadet, CHP
California Highway Patrol
ACTION: DENIED

JESSE GUILLEN, CASE NO. 02-2533
Classification: Youth Correctional Officer
California Youth Authority
ACTION: DENIED

MICHAEL JAMES, CASE NO. 03-0729
Classification: Cadet, CHP
California Highway Patrol
ACTION: DENIED

ARTHUR KOPP, CASE NO. 03-0441
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED

ANNETTE LECKLITER, CASE NO. 03-0600
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED

CLEMENTE MONTES, CASE NO. 03-0172
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED

RAMON NAVARRE, CASE NO. 03-0078
Classification: Cadet, CHP
California Highway Patrol
ACTION: DENIED

MOLLIE REED, CASE NO. 02-1208
Classification: Public Safety
Dispatcher II, CHP
California Highway Patrol
ACTION: WITHDRAWN

ROBERT TAVARES, CASE NO. 03-1669
Classification: Correctional Officer
Department of Corrections
ACTION: DISMISSED

15. MERIT ISSUE COMPLAINT
On September 9, 2003, the following appeal was withdrawn.

CHARLIE HARRIS, CASE NO. 02-2960
Classification: Park & Recreation Specialist
Department of Parks & Recreation
ACTION: WITHDRAWN

16. REQUEST TO FILE CHARGES CASES
PETITIONS FOR REHEARING CASES

On September 9, 2003, the Board adopted the following decisions presented by Laura Aguilera, Assistant Executive Officer, California State Personnel Board

VOTE: Elkins, Harrigan, Tom - Aye.

(Request to File Charges)

JOHN CORRAL, CASE NO. 02-1030
Classification: Staff Services Analyst
Department of Corrections
ACTION: DENIED

EDWARD SOTELO, CASE NO. 02-2413
Classification: Staff Services Analyst
(General)
Department of Social Services
ACTION: DENIED

KIM THORPE, CASE NO. 02-3295
Classification: An employee of
Department of Transportation
ACTION: DENIED

(Petition for Rehearing Case)

LARRY MOORE, CASE NO. 03-0174P
Classification: Director, Television
Communications Center (Specialist)
Department of Transportation
ACTION: DENIED

17. CAREER EXECUTIVE ASSIGNMENT (CEA) CATEGORY ACTIVITY

A. REQUESTS TO ESTABLISH NEW CEA POSITIONS CURRENTLY UNDER
CONSIDERATION

- (1) INFORMATION SECURITY OFFICER
The Employment Development Department proposes to allocate the above position to the CEA category. The Information Security Officer will be the department's principle information security policy maker responsible for developing and implementing risk management and security policy, practices, processes, and procedures.

(2) DEPUTY DIVISION CHIEF, FACILITIES DEVELOPMENT DIVISION

The Office of Statewide Health Planning and Development proposes to allocate the above position to the CEA category. The Deputy Division Chief, Facilities Development Division will develop and implement policies regarding procedures, practices and techniques for health facility construction; construction inspection and testing; building design and materials; and code enforcement.

(3) DISTRICT 6, DEPUTY DISTRICT DIRECTOR, PLANNING & LOCAL ASSISTANCE PROGRAMS

The Department of Transportation proposes to allocate the above position to the CEA category. The Deputy District Director, Planning & Local Assistance Programs will be responsible for the management, policy development and implementation related to the Planning and Local Assistance Programs for District 6 of the Department of Transportation.

(4) CHIEF, EMERGENCY PREPAREDNESS OFFICE

The Department of Health Services proposes to allocate the above position to the CEA category. The Chief, Emergency Preparedness Office will develop statewide public health emergency disaster policies, procedures and standards in response to bio-terrorist/bio-hazardous actions.

B. EXECUTIVE OFFICER DECISIONS REGARDING REQUESTS TO ESTABLISH NEW CEA POSITIONS

(1) CHIEF DEPUTY EXECUTIVE OFFICER

The Victim Compensation and Government Claims Board request to establish the above position to the CEA category has been approved effective July 28, 2003.

(2) BUREAU CHIEF, CRIMINAL INTELLIGENCE BUREAU

The Department of Justice request to establish the above position to the CEA category has been approved effective August 1, 2003.

(3) ASSISTANT EXECUTIVE OFFICER, BOARD OF PHARMACY
ASSISTANT EXECUTIVE OFFICER, BOARD OF REGISTERED NURSING

The Department of Consumer Affairs request to establish the above positions to the CEA category have been disapproved effective August 13, 2003.

- (4) CHIEF, BUREAU OF CRIMINAL STATISTICS AND FIELD OPERATIONS
The Department of Justice's request to establish the above position to the CEA category has been disapproved effective August 18, 2003.

- (5) COMMUNICATIONS DIRECTOR, PUBLIC AFFAIRS OFFICE
The Department of Conservation's request to establish the above position to the CEA category has been disapproved effective August 18, 2003.

ACTION: Noted

18. WRITTEN STAFF REPORT FOR BOARD INFORMATION

ANNUAL REPORT TO THE GOVERNOR AND LEGISLATURE ON
WHISTLEBLOWER RETALIATION

ACTION: Report not presented

A D J O U R N M E N T

SUBMITTED

1. MERIT RULE - Proposed adoption of the new Section 250 to the California Code of Regulations (CCR) entitled Requirement that Selection be Based on Merit and Fitness. (Hearing held July 23, 2002).

ACTION: Adopted with revisions on September 9, 2003.

See page 26-28

VOTE: Elkins, Harrigan, Tom - Aye.

2. TEACHER STATE HOSPITAL (SEVERLY), ETC. Departments of Mental Health and Developmental Services. (Hearing held December 3, 2002).

NO ACTION

3. VOCATIONAL INSTRUCTOR (SAFETY) (VARIOUS SPECIALTIES).
Departments of Mental Health and Developmental Services.
(Hearing held December 3, 2002).

NO ACTION

4. ANSWERS OR APPEALS FILED WITH STATE PERSONNEL BOARD
State Personnel Board (SPB) staff is proposing to adopt new Rule 63 to require, in part, that answers or appeals filed with SPB, requesting that a hearing or investigation be conducted by SPB, notify the responding party of all planned affirmative defenses and requests for relief.
(Hearing held February 3, 2003).

NO ACTION

5. BARBARA LENOUE, CASE NO. 01-3441. Appeal from dismissal.
Department of Developmental Services. (Oral argument held March 4, 2003).

ACTION: On September 9, 2003, adopted Board non-precedential decision modifying dismissal to a 30 day suspension.

VOTE: Elkins, Harrigan, Tom - Aye.

6. TELEVISION SPECIALIST (SAFETY)
The Department of Corrections proposes to establish the new classification Television Specialist (Safety) by using the existing Television Specialist class specification and adding "Safety" as a parenthetical to recognize the public

aspect of their job, additional language will be added to the Typical Tasks section of the class specification and a Special Physical Characteristics section will be added. (Presented to Board March 4, 2003).

NO ACTION

7. JOHN HUGHES, CASE NO. 01-4078. Appeal from ten-percent reduction in salary for 12 months. Department of Corrections. (Oral argument held April 8, 2003).

NO ACTION

8. DEBORAH WHITE-SANBORN, CASE NO. 02-1155P. Appeal from dismissal. Department of Developmental Services. (Oral argument held May 6, 2003).

NO ACTION

9. RICHARD SINCLAIR, CASE NO. 01-3902. Appeal from 60-calendar day suspension. Department of Corrections. (Oral argument held May 6, 2003).

NO ACTION

10. LAWRENCE SCHAEFER, CASE NO. 02-0079. Appeal from 60 calendar days suspension and position reassignment. HARRY MILLER, CASE NO. 02-0160. Appeal from demotion and position reassignment. Department of Corrections. (Hearing held June 3, 2003).

NO ACTION

11. ADRIENNE HAAPALA, CASE NO. 01-0550E. Appeal from discrimination based on age and gender, and retaliation. Department of Corrections. (Oral argument held July 8, 2003).

ACTION: On September 9, 2003, Board adopted Administrative Law Judge's decision dismissing discrimination/retaliation complaint.

VOTE: Elkins, Harrigan, Tom - Aye.

12. ROBERT GREER, CASE NO. 02-3624. Appeal from dismissal. California Department of Corrections. (Administrative Law Judge's proposed decision presented September 9, 2003).

NO ACTION

NOTICE OF GOVERNMENT CODE § 18671.1 RESOLUTION

Since Government Code section 18671.1 requires that cases pending before State Personnel Board Administrative Law Judges (ALJ's) be completed within six months or no later than 90 days after submission of a case, whichever is first, absent the publication of substantial reasons for needing an additional 45 days, the Board hereby publishes its substantial reasons for the need for the 45-day extension for some of the cases now pending before it for decision.

An additional 45 days may be required in cases that require multiple days of hearings, that have been delayed by unusual circumstances, or that involve any delay generated by either party (including, but not limited to, submission of written briefs, requests for settlement conferences, continuances, discovery disputes, pre-hearing motions). In such cases, six months may be inadequate for the ALJ to hear the entire case, prepare a proposed decision containing the detailed factual and legal analysis required by law, and for the State Personnel Board to review the decision and adopt, modify or reject the proposed decision within the time limitations of the statute.

Therefore, at its next meeting, the Board will issue the attached resolution extending the time limitation by 45 days for all cases that meet the above criteria, and that have been before the Board for less than six months as of the date of the Board meeting.

GOVERNMENT CODE § 18671.1 RESOLUTION

WHEREAS, Section 18671.1 provides that, absent waiver by the appellant, the time period in which the Board must render its decision on a petition pending before it shall not exceed six months from the date the petition was filed or 90 days from the date of submission; and

WHEREAS, Section 18671.1 also provides for an extension of the time limitations by 45 additional days if the Board publishes substantial reasons for the need for the extension in its calendar prior to the conclusion of the six-month period; and

WHEREAS, the Agenda for the instant Board meeting included an item titled "Notice of Government Code § 18671.1 Resolution" which sets forth substantial reasons for utilizing that 45-day extension to extend the time to decide particular cases pending before the Board;

WHEREAS, there are currently pending before the Board cases that have required multiple days of hearing and/or that have been delayed by unusual circumstances or by acts or omissions of the parties themselves;

NOW, THEREFORE, BE IT RESOLVED AND ORDERED that the time limitations set forth in Government Code section 18671.1 are hereby extended an additional 45 days for all cases that have required multiple days of hearing or that have been delayed by acts or omissions of the parties or by unusual circumstances and that have been pending before the Board for less than six months as of the date this resolution is adopted.

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I hereby certify that the State Personnel Board made and adopted the preceding resolution at its meeting on September 9, 2003.

VOTE: Elkins, Harrigan, Tom - Aye.

WALTER VAUGHN
Executive Officer
California State Personnel Board

(Revision to Merit and Fitness, See page 20)

Regulation Governing Selection on the Bases of Merit and Fitness

All new text is indicated by underline. A double underline with italics indicates new text that is intended to be single underlined in the final printing.

Title 2. ADMINISTRATION

Division 1. Administrative Personnel

Chapter 1. State Personnel Board

§ 250. Requirement That Selection Be Based on Merit and Fitness.

(a) Appointments to positions in the State civil service made from eligible lists in a manner consistent with provisions of Sections 254, 254.1, and 254.2 as related to the certification of eligibles, by way of transfer, as defined in Government Code Section 18525.3, or by way of reinstatement, as defined in Government Code Section 19140, shall be made on the basis of merit and fitness, defined exclusively as the consideration of each individual's job-related qualifications for a position, including his/her knowledge, skills, abilities, experience, education, training, physical and mental fitness, and any other personal characteristics relative to job requirements, as determined by candidate performance in selection procedures, including, but not limited to, hiring interviews, reference checks, background checks, and/or any other procedures, which assess job-related qualifications and are designed and administered to select those individuals who best meet the selection need.

(b) Eligible lists shall be created on the basis of merit and fitness, and, as such, shall result from: recruitment strategies designed to be as broad and inclusive as necessary to best meet the selection need; and candidate performance in selection procedures that assess job-related qualifications, are competitive in nature, are designed and administered to fairly and objectively identify those candidates who meet the selection need, and result in the ranking of candidates based on their job-related qualifications.

(c) Permanent status in permanent appointments to the civil service is achieved after completion of the required probationary period, the final phase of the selection process. Assessment of employee performance during the probationary period shall be made on the basis of merit and fitness, with regard to the individual's qualifications, including his/her knowledge, skills, abilities, experience, education, training, physical and mental fitness, and any other personal characteristics relative to job requirements, and his/her job-related performance.

(d) All phases of the selection process, including recruitment and examining, eligible list creation, appointment, and completion of the civil service probationary period, shall provide for the fair and equitable treatment of applicants and employees on an equal opportunity basis without regard to political affiliation, race, color, ancestry, national origin, sex, sexual orientation, religion, disability, medical condition, age, or marital status.

(e) Nothing herein shall be construed to relieve appointing powers from the obligation to reasonably accommodate individuals with disabilities as required under the Americans with Disabilities Act, the Fair Employment and Housing Act, and the Civil Service Act.

(f) Nothing herein shall be construed so as to contravene the intent and purpose of Article VII, Section 6, of the California Constitution, which provides for the granting of preferences in state civil service to veterans and their surviving spouses.

(g) Intra-departmental job assignment transfers within the same job classification, such as assignments to different work shifts or work locations, or time base changes pursuant to Section 277 do not constitute appointments for purposes of this regulation.

NOTE: Authority cited: Section 18701, Government Code.
Reference: Article 7, Sections 1 and 6, California Constitution;
Sections 18500, 18525.3, 18900, 18930, 18950, 18951, 18971-18979,
19050, 19052, 19140, 19171, 19173, and 19702.2, Government Code.